

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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| The Burlington Northern and Santa Fe Railway Company, the      | : |          |
| County of Kane, and the State of Illinois, Department of       | : |          |
| Transportation.  | : |          |
|  | : | T02-0112 |
| Stipulated Agreement regarding improving public safety at the  | : |          |
| Kirk Road (CH-77) highway-rail grade crossing of the Company's | : |          |
| track located in Batavia, Kane County, Illinois, designated as | : |          |
| crossing DOT 069 708F, milepost 7.74-D.                        | : |          |

SUPPLEMENTAL ORDER

By the Commission:

On January 8, 2003, the Illinois Commerce Commission ("Commission") entered its Original Order in this matter requiring, among other things, the Burlington Northern Santa Fe Railway Company ("Company") to install automatic flashing light signals and gates controlled by constant warning time circuitry at the Kirk Road (CH-77) **[DOT 069 708F, milepost 7.74-D]** grade crossing of it's track in Batavia, Kane County, Illinois. All work was to be completed within twelve months (12) of the Order date.

On December 3, 2003, the Company filed its First Supplemental Petition stating that due to delays in progressing and completing other warning device installation and improvement projects, it will be unable to complete the required work by January 8, 2004.

On December 19, 2003, the Company filed a Supplement to it Supplemental Petition stating further that Kane County in the last few months implemented a permitting program that requires a "Dig Permit". BNSF was unaware of the requirement until it began work at the Kirk Road location in November of 2003. At that time BNSF submitted the requested permit believing it still had time to complete the required work. As of December 19, 2003, BNSF had still not received the required permit. Therefore, due to the weather turning cold, and the fact it still was waiting on the permit, the railroad has requested an additional 6 months time to complete the required work. The railroad believes it can complete the work by July 8, 2004. Therefore it requests an extension of time, to and including July 8, 2004, within which to complete the work required by the Original Order.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) The Commission has jurisdiction of the parties hereto and the subject matter herein;
- 2) The recitals of fact as set forth in the prefatory portion of this Supplemental Order are true and correct and are hereby adopted as findings of fact;
- 3) The extension of time, to and including July 8, 2004, is fair and reasonable and should be granted, without hearing;
- 4) Public Act 93-0604 (effective November 21, 2003), which amends 18c-7401 (Safety Requirements for Track, Facilities, and Equipment) of the Illinois Commercial Transportation Law, requires installation of temporary STOP signs whenever the Commission authorizes the installation of automatic flashing light signals and gates at public highway-rail grade crossings. The temporary STOP signs shall remain in place until the luminous flashing signal or crossing gate devices have been installed. The rail carrier is responsible for the cost of the installation and subsequent maintenance of any required temporary STOP signs.
- 5) All other terms and conditions of the previous Orders entered in this case should remain in full force and effect except as herein modified.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that The Burlington Northern Santa Fe Railway Company be and it is hereby granted an extension of time, to and including July 8, 2004, within which to perform the work required of it under the original Order in this matter.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall, within 30 days from the date of this Order, install temporary STOP signs at the Kirk Road/CH-77 grade crossing. The temporary STOP signs shall remain in place until the automatic warning devices authorized for installation by this Order are installed and operational. The Burlington Northern and Santa Fe Railway Company shall be responsible for the cost of the installation and subsequent maintenance of the required temporary STOP signs.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall furnish a written statement with the Director of Processing and Information, of the Commission's Transportation Bureau, indicating that the temporary STOP signs have been installed at the Kirk Road/CH-77 grade crossing.

IT IS FURTHER ORDERED that all other terms and conditions of the original Order dated January 8, 2003, shall remain in full force and effect except as herein modified.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 22nd day of January, 2004.

*Edward C. Husley* <sub>2</sub>

Chairman

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| JUDGE                                   |
| SECTION CHIEF <i>mes</i>                |
| <i>[Signature]</i><br>ORDERS SUPERVISOR |